UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Case No: 95-13360

Alvin Charles Wilcox &
Helen Jean Wilcox,

Chapter 12

Debtors.

Appearances:

Thomas H. McCann
Attorney of Record for the Debtors
66 West Main Street
Malone, New York 12953

Alvin & Jean Wilcox
Debtors
Box 387 Canaan Road
Ellenburgh Depot, New York 12935

Mark Swimelar
Chapter 12 Trustee
250 South Clinton Street
Suite 504
Syracuse, New York 13202

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court is a request by the Debtor's Attorney ("McCann") for interim compensation in the amount of $7,182.26. Alvin and Jean Wilcox ("Debtors") object to this request as does Wayne Schoonmaker, a creditor ("Creditor").

Facts

The pertinent and undisputed facts, garnered from the court's docket, are as follows:

1. On September 8, 1995, this Chapter 12 case was filed.

2. On October 19, 1995, McCann, on behalf of the Debtors, filed an adversary complaint seeking to recover money and/or property from New York State Electric and Gas Corporation.

3. On December 18, 1995, the Chapter 12 Trustee ("Trustee") moved to dismiss the case for failure to file a plan. That request was subsequently withdrawn.

4. On January 24, 1996, McCann, on behalf of the Debtors, filed amended schedules B, C, and F and a Chapter 12 plan. A confirmation hearing was scheduled for May 1, 1996.

5. The Trustee and several creditors objected to confirmation. The May 1st hearing was held and adjourned to June 13, 1996.

6. On June 6, 1996, McCann submitted an amended Chapter 12 plan and an amended schedule K.

7. The June 13th confirmation hearing was held and adjourned to June 17, 1996. On June 17th, the court heard argument on confirmation and on a specific issue that had arisen with respect to a land contract. The court reserved decision and directed the parties to submit written briefs on that issue by August 1, 1996. The court scheduled an oral decision on the issue for August 19, 1996.

8. On June 24, 1996, McCann submitted a second amended Chapter 12 plan. The Trustee and several creditors objected and a hearing was scheduled for August 22, 1996.

9. On June 27, 1996, McCann, on behalf of the Debtors, moved for a preliminary injunction and a finding of contempt against several entities. The motion also sought reclassification of several filed claims.

10. On July 11, 1996, the court held a hearing on the preliminary injunction and the other requested relief; on July 23, the court denied the request in full.

11. On August 2, 1996 McCann submitted the required papers for the August 19th decision. The Creditor responded and on August 19, 1996, the court issued a decision on the executory contract issue and denied confirmation of the plan. The motions to reclassify claims were also denied.

12. On September 9, 1996, McCann submitted a third amended Chapter 12 plan. The Trustee and several creditors objected.

13. On September 9, 1996, the Clinton County District Attorney moved to lift stay to commence criminal proceedings against the Debtors. On October 9, 1996, McCann submitted opposition to this request and "cross moved"[1] for attorney's fees. The issue was ultimately settled by the parties.

14. On November 6, 1996, a hearing on confirmation of the third amended Chapter 12 plan was held. Upon request, this hearing was adjourned to December 5, 1996 and then further adjourned to January 9, 1997.

15. On January 9, 1996, it was reported that the objections to the third amended plan had been settled.

16. On February 7 and 10, 1997, McCann, on behalf of the Debtors, made motions requesting reduction or dismissal of various claims. These motions were subsequently denied.

17. On March 6, 1997, the Trustee made a motion to dismiss the case pursuant to 11 U.S.C. § 1208(c). The motion was ultimately withdrawn.

18. On March 25, 1997, McCann made a motion seeking to reduce or dismiss a certain claim. The issue was settled by the parties.

19. On April 10, 1997, the third amended plan was confirmed. On April 14, 1997 the adversary proceeding was dismissed and closed.

20. On July 31, 1997, the Creditor moved for relief from stay; McCann opposed the motion and "cross moved"[2] for attorney's fees and damages, among other affirmative relief, and also moved to have the confirmed plan modified. On September 18, 1997 a chambers conference was held with respect to the part of the "cross motion" dealing with attorney's fees and damages.

21. On September 22, 1997, McCann, utilizing the proper procedure, moved

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[1]There is no such pleading as a "cross motion." All requests for affirmative relief are to be filed and served pursuant to applicable Federal Rule of Civil Procedure, Federal Bankruptcy Rule and Local Rule.

[2]See n.1.

to modify the plan.

22. On November 5, 1997, the Creditor's lift stay motion was heard; the parties reached a settlement.

23. On November 12, the court granted the Debtor's request to modify the plan.

24. On February 2, 1998, the Creditor once again moved for relief from stay. An affidavit in opposition was filed by the Trustee.

25. On February 12, 1998, McCann submitted opposition to the Creditor's lift stay motion. McCann also requested another modification of the plan. On March 3, 1998 a further affidavit in opposition to the Creditor's motion was submitted.

26. On March 10, 1998, the court denied the Creditor's request to lift stay.

27. On September 21, 1998, McCann made an application for fees and reimbursement of expenses. That request was subsequently withdrawn.

28. On August 28, 2000, McCann made the present request. The Debtors and the Creditor objected. A hearing was held and a briefing schedule was issued. The matter was fully submitted to the court on November 3, 2000.

Arguments

McCann argues that he has expended a substantial amount of time and effort in this case and that he should be paid for these services. He acknowledges that he received a retainer of $1,500 prior to the filing of this case but contends that it contemplated only limited post-filing services not the extraordinary ones that eventually had to be performed.

The Debtors concede that McCann performed a considerable amount of work but they argue if he had done the work properly in the first instance much of the time and effort that was expended would not have been necessary. The Creditor does not object to the fee application but argues that the attorney's fees should be paid after his claim; he seems to be arguing that the

payment of the attorneys fees should be subordinated to the claims of creditors.

Discussion

This court has, in several cases, extensively discussed the requirements of a fee application; familiarity with those cases is presumed.[3] The present request has a number of deficiencies that prevent the court from determining whether the services performed comport with 11 U.S.C. § 330(a)(4)(B). Accordingly, a substantial portion of this application is denied, without prejudice.

This court has indicated its agreement with the standards articulated by Chief Bankruptcy Judge Gerling in the case, *In re Bennett Funding*, 213 B.R. 234 (Bankr. N.D.N.Y. 1997). In that case, Chief Judge Gerling distilled various cases and concluded that certain criteria must be met for the court to make a 11 U.S.C. § 330 determination. These standards include:

1. It is well settled that the bankruptcy court has an affirmative obligation to examine fees and expenses requested even if no objection has been made;

2. It is also true that the court may award compensation only for actual and necessary services and expenses ... and that the burden of proving that services rendered were actual and necessary, and that the compensation sought is reasonable, rests with the applicant;

3. To meet this burden, the applicant must support its request for fees and expenses with specific, detailed and itemized documentation;

4. ...

5. In cases where the time entry is too vague or insufficient to allow for a fair evaluation of the work done and the reasonableness and necessity for such work, the court should disallow compensation for such services;

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[3]The court recognizes that those cases dealt with professional services rendered in a Chapter 11 case. However, by virtue of 11 U.S.C. § 330(a)(4)(B), these principles apply to Chapter 12 cases.

6. The court should be able to determine from the fee entries themselves the legal issues involved, the difficulty of the issues and the resolution or results obtained for the estate. ...

7. It is not the court's responsibility to recognize or assume that a vague time entry meets these requirements.

8. ...

In re Lawrence Agency, Case No. 97-11263 (Bankr. N.D.N.Y. July 8, 1998) (citing, *In re Bennet Funding*, 213 B.R. 234 (Bankr. N.D.N.Y. 1997)).

Additionally, when analyzing fee applications bankruptcy courts must remain aware that they are "not at liberty to engage in 'vicarious generosity.'" *Id.* (citing *In re STN Enterprises, Inc.*, 70 B.R. 823 (Bankr. Vt. 1987)).

The first subsection of Exhibit "A" is titled "Court Appearances – Albany, New York" and requests authorization for $3,275.00 worth of fees. However, this entry, on its face, is insufficient for the court to determine what work was done and whether it was reasonable and necessary. The request in this subsection must be denied in its entirety. Identically, the portion of the request labeled "Office Consultations" does not give any indication of what transpired at these consultations. In fact, the only entries in this subsection attesting to their purpose are where the Debtors cancelled the appointments. The request in this subsection must also be denied in full. Both sections lack the "itemized documentation" necessary for the court to determine the "legal issues involved, the difficulty of the issues, and the ... results obtained." *Id.*

The subsection "Telephone Consultations" has enough specificity in certain entries for the court to determine that the services provided were actual and necessary and that the compensation for them is reasonable. Accordingly, it will grant compensation for the

consultations dated June 12, 1996 and August 22, 1997, totaling $130.00. All other requests in this subsection are denied, without prejudice, for lack of specificity.

The subsection "Correspondence/Document Preparation" has the required specificity for the court to make the necessary analysis and the court concludes that the services were necessary and the compensation sought is reasonable. Therefore, the request for $540.00 is granted.

The court also denies, without prejudice, the request for expenses. The request suffers from the same deficiencies, i.e., lack of specificity, as the other requests that have been denied.

The court is familiar with this Chapter 12 case and McCann's work in it and is comfortable authorizing some remuneration beyond the nominal amount presently awarded. However, McCann needs to provide the court with the necessary documentation to make an additional award; the entries must conform with the precedent for fee applications.

For the above reasons, McCann's request is allowed in the amount of $670.00. Since the amount to be paid is *de minimis,* it is directed to be paid as an administrative claim through the Chapter 12 plan. The remainder of the application is denied, without prejudice, subject to renewal with the required specificity.

It is so ORDERED.

Dated:
Albany, New York

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Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge